



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Ralph Buchanan
36 Acorn Drive
Ossipee, NH 03864

Re: Ossipee Sub Station, 63 Gilford East Drive
Ossipee, NH - UST ID # 0-110511

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
No. AF 04-061**

October 13, 2004

I. INTRODUCTION

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Waste Management Division ("the Division") to Ralph Buchanan, pursuant to RSA 146-C and Env-C 607. The Division is proposing that fines totaling \$2,200 be imposed against Ralph Buchanan for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Waste Management Division, is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03302.
2. Ralph Buchanan is an individual having a mailing address of 845 Route 116, Ossipee, NH 03864.

III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS

1. RSA 146-C authorizes DES to regulate the installation, maintenance, operation, and closure of underground storage facilities. Pursuant to RSA 146-C:9, the Commissioner of DES has adopted New Hampshire Administrative Rules Env-Wm 1401 to set forth the requirements for underground storage facilities by "establishing criteria for registration and permitting, and standards for design, installation, operation, maintenance, and monitoring of such facilities."
2. RSA 146-C:10-a authorizes the Commissioner of the Department of Environmental Services ("DES") to impose administrative fines of up to \$2,000 per offense upon any person who violates any provision of RSA 146-C or any rule adopted under the provisions of this chapter. Pursuant to RSA 146-C:10-a, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.
3. Ralph Buchanan is the registered facility owner of two underground storage tanks ("UST") at the Ossipee Sub Station facility ("the Facility"), further identified as UST #0-110511 located on real property at 63 Gilford East Drive in Ossipee, NH ("the Property").

4. The US' systems are subject to the requirements of RSA 146-C and Env-Wm 1401
5. On September 15, 2003, a Division inspector conducted a compliance inspection at the Facility and noted compliance deficiencies which were identified in a report ("the Report") issued to the Facility representative at the time of the inspection.
6. The Report notified the Facility that compliance was to be achieved within 30 days of the date of the inspection and verification of compliance submitted to the Division within 45 days of the date of the inspection. The report was signed by Ralph Buchanan on behalf of the Facility.
7. The Report also included a UST Facility Summary of Deficiencies identified at the time of the inspection. Among those deficiencies identified, the following were not corrected within 45 days after the inspection was performed:
 - a. The permit-to-operate was not posted;
 - b. Inventory monitoring for the 10,000-gallon gasoline UST (Tank 4) was not available

The overfill protection devices for Tank 4 and the compartment 10,000-gallon UST (split 5,000-diesel/5,000-gasoline) were not properly installed; and
 - d. The lights on the leak monitoring equipment were not operational.
8. Env-Wm 1401.07(c) requires a permit to be displayed so it is visible and permanently affixed on the facility premises.
9. Env-Wm 1401.11(a) requires the owner of an underground storage facility to conduct inventory monitoring for each underground storage tank, and to maintain separate records for each tank and interconnected system.
10. Env-Wm 1401.25(d) defines the manner in which the overfill protection devices shall be installed.
11. Env-Wm 1401.31(a) requires leak monitoring equipment and devices to be maintained in good working order at all times to continuously perform their original design function and shall be tested annually for proper operation in accordance with the manufacturer's requirements.

IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINES

1. Ralph Buchanan has violated Env-Wm 1401.07(c) by failing to display and permanently affix a permit at the Facility. For this violation, Env-C 607.02(b) specifies a fine of \$100.
2. Ralph Buchanan has violated Env-Wm 1401.11(a) by failing to maintain accurate stock inventory records for the 10,000-gallon gasoline UST (Tank 4) in accordance with RSA 146-C:5 and Env-Wm 1401.11. For this violation, Env-C 607.05(a) specifies a fine of \$500 per requirement not met.

3. Ralph Buchanan has violated Env-Wm 1401.25(d) by failing to properly install and maintain overfill protection equipment on Tank 4 and the compartment 10,000-gallon UST (split 5,000-gallon diesel/5,000-gallon gasoline). For this violation, Env-C 607.05(j) specifies a fine of \$200 per requirement not met or \$600 for the Facility.

4. Ralph Buchanan has violated Env-Wm 1401.31(a) by failing to maintain leak monitoring equipment in good working order at all times to continuously perform its original design function. For this violation, Env-C 607.05(d) specifies a fine of \$1,000 per requirement not met

The total fine being sought is \$2,200.

V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Pursuant to Env-C 601.06, Ralph Buchanan is required to respond to this notice. Please respond no later than November 15, 2004, using the enclosed colored form.

If Ralph Buchanan would like to have a hearing, please sign the appearance section of the colored form and return it to the DES Legal Unit, as noted on the form. A Notice of Scheduled Hearing will be issued.

2. If Ralph Buchanan chooses to waive the hearing and pay the proposed fine, please have the authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.
3. If Ralph Buchanan wishes to discuss the possibility of settling the case, please have the authorized representative sign the appearance and return it to the DES Legal Unit **and** call the DES Legal Unit to indicate Ralph Buchanan's interest in settling.

Ralph Buchanan is not required to be represented by an attorney. If Ralph Buchanan chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that Ralph Buchanan committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that Ralph Buchanan committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

- * Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances

listed below **that Ralph Buchanan proves, by a preponderance of the evidence, applies in this case:**

The violation was a one-time or non-continuing violation, **and** Ralph Buchanan did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** Ralph Buchanan did not benefit financially, whether directly or indirectly, from the violation.

2. At the time the violation was committed, Ralph Buchanan was making a good faith effort to comply with the requirement that was violated.
3. Ralph Buchanan has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to Ralph Buchanan's case which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

An administrative fine hearing is a formal hearing. Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that Ralph Buchanan committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is Ralph Buchanan's opportunity to present testimony and evidence that Ralph Buchanan did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If Ralph Buchanan has any evidence, such as photographs, business records or other documents that believe show that Ralph Buchanan did not commit the violation or that otherwise support Ralph Buchanan's position, Ralph Buchanan should bring the evidence to the hearing. Ralph Buchanan may also bring witnesses (other people) to the hearing to testify on Ralph Buchanan's behalf.

If Ralph Buchanan wishes to have an informal meeting to discuss the issues, Ralph Buchanan must contact the DES Legal Unit at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.des.state.nh.us). If Ralph Buchanan has any questions about this matter, please contact the DES Legal Unit, at (603) 271-6072.



Anthony P. Giunta, P.G., Director
DES Waste Management Division

Enclosure (*NHDES Fact Sheet #CO-2002*)

cc: Gretchen R. Hamel, Administrator, DES Legal Unit
Michael J. Walls, Assistant Commissioner DES
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Public Information Officer, DES PIP Office
Lynn A. Woodard, P.E., WMD UST Supervisor
Thomas R. Beaulieu, WMD UST Chief
Mark Antonia, WMD

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**RALPH BUCHANAN IS REQUIRED BY LAW
TO RESPOND TO THIS NOTICE.**

PLEASE RESPOND NO LATER THAN November 15, 2004

Please check the appropriate line and fill in the requested information below.

APPEARANCE On behalf of Ralph Buchanan

I request to have a **formal hearing** scheduled in this matter.

I request to have a **prehearing conference** scheduled in this matter.

would like to **meet informally** to discuss the issues in this matter.

WAIVER OF HEARING On behalf of Ralph Buchanan

_____ I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$2,200 paid to "Treasurer, State of New Hampshire" is enclosed.*

** If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

Pursuant to Env-C 203.05 please provide the following information:

Signature Date

Name (please print or type): _____

Title: _____

Phone: _____

RETURN THIS PAGE ONLY TO:
Department of Environmental Services ~ Legal Unit
Attn: Michael Sclafani, Legal Assistant
29 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095